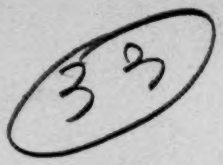

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

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# No. 293

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LEBANON STEEL FOUNDRY (A PENNSYLVANIA CORPORATION),

*Petitioner,*

*v.*

NATIONAL LABOR RELATIONS BOARD.

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**PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA AND BRIEF IN SUPPORT THEREOF.**

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H. RANK BICKEL, JR.,
CLARENCE D. BECKER,
H. P. MCFADDEN,
*Counsel for Petitioner.*

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NATIONAL LABOR RELATIONS BOARD.

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## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

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*To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:*

Your Petitioner, Lebanon Steel Foundry, a Pennsylvania corporation, respectfully prays that a Writ of Certiorari issue to review the Decree of the United States Court of Appeals for the District of Columbia in the above-captioned cause, entered on June 29, 1942, unreported but printed in the Record, page 258.

### Jurisdiction.

The Decree of the United States Court of Appeals for the District of Columbia was entered June 29, 1942 (R. 258). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of

February 13, 1925 (United States Code Annotated Title 28, paragraph 347), and under Sections 10 (e) and (f) of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449; United States Code Annotated Title 29 (1941 Supplement), paragraph 151, et seq.).

**Summary and Short Statement of the Matter Involved.**

Petitioner, Lebanon Steel Foundry, a Pennsylvania corporation, with its principal office and plant located in the City of Lebanon, Lebanon County, Pennsylvania, is engaged in the manufacture, sale and distribution of steel castings in interstate commerce.

The Steel Workers Organizing Committee (hereinafter referred to as S. W. O. C.), is a labor organization or union, affiliated with the Congress of Industrial Organizations (hereinafter referred to as C. I. O.).

In September of 1940, the Union began activity among the Petitioner's employees. It secured from 73 employees, membership application cards, exemplified by Board's Exhibit 4A-1, (R. 137).

The membership application cards contained not only an application for membership, but also an express designation of the Union as collective bargaining representative of the persons signing (R. 137).

The Union then learned from some of these employees that they desired to have Union dues deducted or checked off from their wages (R. 105). The organizer thereupon instructed them to procure signatures to check-off cards ("Wage Deduction Authority"), in place of the membership application cards, in soliciting Union members (R. 105).

Thereafter, only the check-off cards were used in soliciting members (R. 105).

The check-off cards ("Wage Deduction Authority") used, are exemplified by Board's Exhibit 5A-1 (R. 137-138), which reads as follows:

Wage Deduction Authority.

Dated .....

No.

To the Paymaster of

I hereby authorize you to deduct from my wages one dollar ($1.00) per calendar month, beginning with the month of —— 19—, provided I have worked a total of five (5) days or more during the calendar month.

This payment to be sent to the Secretary-Treasurer of the S. W. O. C., David J. McDonald, 1500 Commonwealth Building, Pittsburgh, Pa.

This authority to be effective during the life of the agreement. This authority will automatically be cancelled if, as and when the labor and working agreement between your Company and the S. W. O. C. terminates.

..... .....

(Signature) (Address)

There were also distributed for signatures, check-off cards in a form varying somewhat from Board's Exhibit 5A, but Exhibits 5A-1 to 5A-337 (R. 138) were identical with Exhibit 5A-1. The other type or form of check-off card referred to reads as follows:

1537 Wage Deduction Authority

No. Dated .....

To the Paymaster of

I hereby authorize you to deduct from my wages union dues amounting to one dollar ($1.00) per calendar month, provided I have worked a total of five (5) or more days during the calendar month; and my initiation fee (amount specified below) which shall be deducted within one month from the date you received this card from the Financial Secretary of the local union.

Money so deducted to be sent to David J. McDonald, Secretary-Treasurer of the S. W. O. C., 1500 Commonwealth Building, Pittsburgh, Pennsylvania.

This authority shall only be effective during a collective bargaining agreement between the S. W. O. C. and your Company that includes the check-off system.

Initiation Fee, $——.

..... .....

(Signature) (Address)

The check-off cards do not contain an express designation of the Union as collective bargaining representative of the persons signing.

The petitioner admits, for the purposes of the question to be submitted to this Court, that during the time bargaining was requested by the S. W. O. C. (i.e. from December 15, 1940 to January 21, 1941), the S. W. O. C. had obtained from a majority of the employees in the appropriate unit signed check-off cards.

The petitioner declined to recognize the check-off cards ("Wage Deduction Authority") as conferring authority upon the Union to bargain for the signatories of said cards.

Upon the usual proceedings, pursuant to Section 10 of the National Labor Relations Act, which are fully set forth in the Board's Decision (R. 70-72), the Board, on July 10, 1941, issued its Findings of Fact, Conclusions of Law and Order (R. 70-101) to the effect that petitioner refused, in violation of Section 8 (5) and (1) of the said Act, to bargain collectively with the Steel Workers Organizing Committee (the Union), although that organization represented a majority of its employees in an appropriate unit (R. 80, 99-100). The Board directed petitioner to cease and desist from the unfair labor practices found and ordered it to bargain collectively with the Union upon request and to post appropriate notices (R. 100-101).

The National Labor Relations Board found as a fact that the employees of petitioner who signed the check-off cards, thereby designated the Union as their representative for the purpose of collective bargaining. The Board in its Decision, said:

> "We believe and find that those employees of the Respondent who signed check-off cards, thereby designated the Union as their representative for the purposes of collective bargaining." (R. 77).

Your petitioner, aggrieved by the Final Order of the Board, obtained, pursuant to Section 10 (f) of the National Labor Relations Act, a review of such Order in the Court of Appeals for the District of Columbia, by filing in said Court, a Petition praying that the Order of the Board be set aside.

Petitioner predicated its case upon one, and only one, ground, namely, THAT THE WAGE DEDUCTION AUTHORITY OR CHECK-OFF CARDS CANNOT BE CONSTRUED AS DESIGNATING THE UNION THE BARGAINING REPRESENTATIVE OF THE EMPLOYEES WHO SIGNED THE CARDS.

Restated, in the language of the Court of Appeals for the District of Columbia, on the first page of its Opinion (R. 248) the question submitted was as follows:

> "The question is narrow. Shortly, it is whether certain check-off cards signed by employees constituted evidence of authority to bargain collectively."

The United States Court of Appeals for the District of Columbia, upon petitioner's petition to review and set aside the Order of the Board and the Board's Answer thereto, with a request for the enforcement of its Order, in its Opinion handed down June 29, 1942, affirmed the Order of the Board and subsequently, on June 29, 1942, entered an appropriate Decree.

The United States Court of Appeals for the District of Columbia, in an opinion to which Associate Justice Stephens filed a dissenting opinion, held that petitioner had been guilty of an unfair labor practice in refusing to bargain collectively with the union on the grounds that:

(1) the "check-off" cards show on their face an intention to authorize collective bargaining, and

(2) this intention becomes indisputable when the cards are read in view of the proven usages and the circumstances of signature.

In his dissenting opinion Associate Justice Stephens stated that the cards in themselves did not either expressly or impliedly authorize the Union to bargain collectively and that there was no evidence of such usage in the community actually or constructively known to the signers which would supply the verbal deficiency.

**The Question Presented.**

The single, and perhaps narrow, question presented may be stated as follows:

1. Whether or not the check-off cards ("Wage Deduction Authority") can be construed as designating the Union the bargaining representative of the employees who signed the cards, under the National Labor Relations Act.

If this question is answered in the negative, then, of course, petitioner cannot be guilty of the unfair labor practice of refusing to bargain collectively with the Union as representatives of its employees.

**Reasons Relied On for the Allowance of the Writ.**

**1. The United States Court of Appeals for the District of Columbia has decided a question of general importance relating to the construction and application of a statute of the United States, the National Labor Relations Act, which has not been, but should be, settled by this Court.**

The proper interpretation of the question is of general importance to employers and employees in the bargaining

relationship. Section 7 of the National Labor Relations Act confers upon employees "The right * * * to bargain collectively through representatives of their own choosing." It is vital to both employer and employee to know what indicia of agency must be presented on the one hand and accepted on the other. The employer at his peril must bargain with the majority's representative. If the decision of the court below and its doctrine of lax construction is permitted to stand, employers may be impelled to interpret evidence of representation, however weak, as valid designations of agency, in order to avoid the danger of failing to bargain collectively with the majority's representative. Negotiations involving time and effort may be undertaken with an alleged representative which, in fact, was not actually accredited. Conflicting claims to majority representation and the subsequent uncertainty of the employer with whom to deal will be multiplied if the easy canons of the court below are followed.

The policy of the Act is to encourage the practice and procedure of collective bargaining. While the Act provides for an election to determine majority representation, the procedure is relatively cumbersome, and in limine the process of bargaining should not be hampered by bickerings arising out of well-founded doubts as to the right of the "representative" to act in the premises.

**2. The United States Court of Appeals for the District of Columbia has decided a question of substance relating to the construction and application of a statute of the United States, the National Labor Relations Act, which has not been, but should be, settled by this Court.**

The employer is *compelled*, under the National Labor Relations Act, to bargain collectively only with the representative of the majority. The charge of unfair labor practice can be made against the employer only if he fails to honor demands to bargain by a properly accredited major-

ity representative. Whether in the case at bar the alleged proof of agency which the Union submitted to petitioner was sufficient is a substantial matter. The decision of the court below has, by a process of interpretation at variance with the principles of agency, visited upon petitioner an undeserved onus. The National Labor Relations Act itself does not prescribe the method of designating a representative, and resort should be had to general law to determine the status of the alleged representative. Where, as here, the court below, has gone to unprecedented lengths to construe the check-off cards as designations of a bargaining representative, the propriety of its action should be reviewed by this Court.

WHEREFORE, your petitioner prays that a writ of certiorari be issued out of and under the seal of your Honorable Court directed to the United States Court of Appeals for the District of Columbia commanding the court to certify and transmit to this Court for review and determination on a date to be therein named a full and complete transcript of the record and proceedings in the case numbered and entitled on its docket number 7990, Lebanon Steel Foundry (a Pennsylvania corporation), petitioner, v. National Labor Relations Board, respondent, and that the decree enforcing the order of the National Labor Relations Board as entered by said court in said case be reversed by this Honorable Court and that your petitioner have such other and further relief in the premises as to your Honorable Court may seem meet and just.

And your petitioner will ever pray, etc.

H. RANK BICKEL, JR.,
CLARENCE D. BECKER,
H. P. MCFADDEN,
*Counsel for Petitioner.*